

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TROY COOPER,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 3:19-cv-139
)	Judge Stephanie L. Haines
JOHN WETZEL, <i>et al.</i>)	Magistrate Judge Keith A. Pesto
)	
Defendants.)	

MEMORANDUM ORDER

This is a civil rights case brought under 42 U.S.C. §1983 by Troy Cooper (“Plaintiff”) relating to alleged harsh conditions he experienced while incarcerated at State Correctional Institution- Houtzdale (“SCI- Houtzdale”). This matter was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Federal Magistrates Act, 28 U.S. C. § 636, and Local Civil Rule 72.D.

Plaintiff commenced this action on August 28, 2019 by filing a motion for leave to proceed *in forma pauperis* that attached his complaint as an exhibit thereto (ECF No. 1). Plaintiff failed to attach an inmate account statement with his motion for leave to proceed *in forma pauperis*, and Magistrate Judge Pesto recommended the case be dismissed for failure to prosecute if Plaintiff did not submit an inmate account statement within fourteen days (ECF No. 4). On March 4, 2020, Magistrate Judge Pesto granted Plaintiff leave to proceed *in forma pauperis* (ECF No. 9) as Plaintiff appropriately submitted a complete motion to do so, however, after screening the complaint (ECF No. 10) under 28 U.S.C. §1915A, Magistrate Judge Pesto recommended the complaint be dismissed as to all Defendants except for Defendant Fetsko, who is described by Plaintiff as a psychiatrist assigned to the Diversionary Treatment Unit of SCI-Houtzdale. Magistrate Judge Pesto recommended such dismissal be without prejudice to Plaintiff to amend

his complaint, and on April 22, 2020, Plaintiff then filed an amended complaint (ECF No. 13). Plaintiff's amended complaint names the following persons as Defendants: John Wetzel, Bobbi Jo Solomon, Mr. Fetsko, Michelle Ivicic, Barry Smith, David J. Close, Mrs. Kupchella, and Mrs. Dubler. *Id.* In his amended complaint (ECF No. 13), Plaintiff alleges Defendants are liable for the exacerbation of his mental illness due to prolonged isolation and the harsh conditions he experienced in the Diversionary Treatment Unit at SCI-Houtzdale.

On September 20, 2021, Magistrate Judge Pesto filed a Report and Recommendation (ECF No. 20) recommending all Defendants, except for Defendant Fetsko and Defendant Barry Smith, should be dismissed and that the dismissal of those Defendants should be without further leave to amend. Plaintiff was notified he had fourteen days to file objections to Magistrate Judge Pesto's Report and Recommendation (ECF No. 20) pursuant to 28 U.S.C. §636 (b)(1). To date, Plaintiff has not filed objections and the time to do so has expired.

After a review of the documents of record in this matter and the Report and Recommendation (ECF No. 20) under the "reasoned consideration" standard, *see EEOC V. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (standard of review when no timely and specific objections are filed), the Court will accept in whole the findings and recommendations of Magistrate Judge Pesto in this matter. The Court will dismiss all Defendants with the exception of Defendant Fetsko and Defendant Smith, and the Court finds Magistrate Judge Pesto correctly determined that further amendment of the claims against the dismissed Defendants is not warranted as the record reflects such amendment would be futile. Plaintiff has already been permitted an opportunity to amend his claims, and the amended complaint (ECF No. 13) fails to state sufficient facts to allow Plaintiff to maintain his claims against the dismissed Defendants.

Accordingly, the following order is entered:

ORDER

AND NOW, this 13th day of October, 2021, for the reasons set forth in Magistrate Judge Keith A. Pesto's Report and Recommendation (ECF No. 20), which is adopted as the Opinion of the Court, IT IS ORDERED that Plaintiff's claims against Defendants John Wetzel, Bobbi Jo Solomon, Michelle Ivicic, David J. Close, Mrs. Kupchella, and Mrs. Dubler are hereby DISMISSED WITH PREJUDICE; and,

IT IS FURTHER ORDERED that the Clerk of Courts shall terminate this matter as to Defendants John Wetzel, Bobbi Jo Solomon, Michelle Ivicic, David J. Close, Mrs. Kupchella, and Mrs. Dubler.



Stephanie L. Haines
United States District Judge